

Virginia Employment Commission



EQUAL OPPORTUNITY PLAN

July 2003-June 2005

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purpose



This Equal Opportunity Plan has been developed to provide a written plan of action to establish and maintain equal opportunity in accordance with state and federal employment laws and regulations. It is intended to be a resource guide for managers and employees on Equal Employment Opportunity related matters.

In accordance with regulatory requirements, the plan is intended to ensure that the VEC's workforce reflects the labor market with respect to the representation of females and minorities. Additionally, the plan is designed to ensure equal opportunity for all employees and applicants for employment.¹

The Governor's Executive Order 1 (02) and the Department of Human Resource Management Policy 2.05 requires that all state agencies provide equal employment opportunity to employees and applicants for employment, without regard to race, color, religion, sex, age, national origin, disability, or political affiliation. The prohibition against discrimination covers all aspects of employment, including hiring, firing, demotion, promotion, layoff, disciplinary actions, transfer, compensation, benefits, and other terms, conditions, and privileges of employment.

This plan has been developed by the Human Resource Management Services (HRMS) Division; however, the responsibility for equal employment opportunity is shared by all agency managers and supervisors.

¹ The agency's plan to ensure nondiscrimination and equal opportunity with respect to recipients of VEC services is outlined in the agency's Methods of Administration.

executive order 1 (02)

COMMONWEALTH OF VIRGINIA OFFICE OF THE GOVERNOR

Equal Employment Opportunity

By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal employment opportunity in all facets of state government.

This policy specifically prohibits discrimination on the basis of race, sex, color, national origin, religion, age, or political affiliation, or against otherwise qualified persons with disabilities.

State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director, Department of Human Resource Management, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

Allegations of violations of this policy shall be brought to the attention of the Office of Equal Employment Services of the Department of Human Resource Management. No state appointing authority, other management principals, or supervisors shall take retaliatory actions against persons making such allegations.

Any state employee found in violation of this policy shall be subject to appropriate disciplinary action.



The Secretary of Administration is directed to review annually state procurement, employment and other relevant policies for compliance with the non-discrimination mandate contained herein, and shall report to the Governor his findings together with such recommendations as he deems appropriate. The Director, Department of Human Resource Management shall assist in this review.

This Executive Order supersedes and rescinds Executive Order Number Two (98), Equal Opportunity, issued by Governor James S. Gilmore III on January 17, 1998.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 12th day of January, 2002.

/s/Mark Warner, Governor

Attest: /s/Secretary of the Commonwealth
Governor of Virginia - Mark R. Warner

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nondiscrimination and equal opportunity policy

Effective Date: March 25, 2002

Rescission: Nondiscrimination and Equal Opportunity Policy
September 1, 2000

POLICY

It is the policy of the Virginia Employment Commission (VEC) to provide equal opportunity in employment to all employees and applicants for employment without regard to race, color, religion, gender, national origin, age, disability, or political affiliation.

This policy applies to all terms, conditions, and privileges of employment, including: hiring, compensation, benefits, work assignments, evaluations, promotion, transfer, disciplinary actions, educational assistance, training, social and recreational programs, and use of VEC facilities. This policy prohibits the lowering of bona fide job requirements and qualification standards to give preference to any applicant.

In addition to its equal opportunity commitment in employment, VEC shall provide equal opportunity in accordance with Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, 29 CFR Part 37, and other pertinent directives. To that end, no person shall, on the basis of race, color, religion, gender, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in any VEC program or activity.





BACKGROUND

- (1) Title VI and Title VII, Civil Rights Act of 1964
- (2) Civil Rights Act of 1991
- (3) Governor's Executive Order Number One (02)
- (4) 29 CFR Part 37
- (5) Section 504 of the Rehabilitation Act
- (6) Title I and Title II, Americans with Disabilities Act

Programs and activities funded by the United States Department of Labor under the Workforce Investment Act (WIA), are subject to federal equal opportunity laws and regulations. The VEC, as a recipient of federal funds, is obligated to comply with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act.

Section 188 of the WIA describes the prohibition against discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship and participation in WIA programs.


The Governor's Executive Order 1 (02) prohibits employment discrimination on the basis of race, sex, color, national origin, religion, age, or political affiliation, or against otherwise qualified persons with disabilities. The lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment is not permitted or required.

PROCEDURES

A. Notification

All employees, applicants for employment, and customers should be notified of this policy.

1. Customers should be notified of this policy by posting the agency's "Equal Opportunity is the Law" posters in all VEC offices.

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2. New employees (classified and wage) should be given a copy upon employment.
 3. Current employees should be informed of changes to the policy.

B. Complaints of Discrimination

Employees and applicants for employment may file discrimination complaints with the VEC EO Officer (Human Relations Manager). Employees and applicants for employment may also file complaints with the Office of Equal Employment Services of the Department of Human Resource Management and the U.S. Equal Employment Opportunity Commission.

Customers (recipients of VEC services) may file complaints either with the VEC EO Officer or with the Director, Civil Rights Center of the U.S. Department of Labor.

Retaliatory action shall not be taken by agency management against any person for filing a complaint of discrimination.

C. Violations

Any VEC employee found in violation of this policy shall be subject to appropriate disciplinary action.

AGENCY RIGHT

The Virginia Employment Commission reserves the right to revise or eliminate this policy.



Dolores A. Esser
Commissioner

sexual harassment policy

Effective Date: May 1, 2004

Rescission: Sexual Harassment Policy
September 1, 2000

POLICY

The Virginia Employment Commission, in law and in spirit, is committed to providing a work environment that is conducive to the performance of job duties and free from intimidation or coercion in any form.

As an employer, the VEC is dedicated to a stringent policy against discrimination as indicated in Executive Order Number One (02): Harassment on the basis of race, color, sex, national origin, religion, age, or disability is a form of discrimination prohibited by federal and state law. It is the intent of this policy to further detail harassment on the basis of sex.

Sexual harassment is an unlawful employment practice, which potentially can subject both the agency and the harasser to financial liability. The agency intends to avoid such liability by prohibiting the practice of sexual harassment of any employee, applicant for employment, contractor, or volunteer and requiring that its employees refrain from conduct that could give rise to allegations of sexual harassment.

BACKGROUND

- (1) Title VII, Civil Rights Act of 1964
- (2) Civil Rights Act of 1991
- (3) Governor's Executive Order Number One (02)
- (4) Department of Human Resource Management Policy Number 2.30 (Workplace Harassment)
- (5) Virginia Employment Commission Agency Policy on Nondiscrimination and Equal Opportunity
- (6) Virginia Employment Commission Methods of Administration (MOA), Element #2, Notice & Communication




DEFINITIONS

What Constitutes Sexual Harassment

- A. Sexual harassment is defined by the Equal Employment Opportunity Commission (EEOC) as unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature, when:
1. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
 2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual, or;
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
- B. Forms of behavior which may be considered sexual harassment include, but are not limited to:
1. Verbal - Specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, sexual threats.
 2. Non-Verbal - Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
 3. Physical - Unwelcome physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, sexual assault.
- C. In addition to being prohibited in the work environment, these behaviors are also not to be tolerated at agency-sponsored activities, such as conferences, workshops, retreats, etc.
- D. The VEC may be liable for acts of sexual harassment committed in the agency workplace by non-employees such as vendors or clients for services. The VEC may also be liable for acts of sexual harassment committed by agency employees against these non-employees.




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- E. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, and that fails to respect the rights of others. In addition to being personally offensive, the behavior must be severe or pervasive enough to create a work environment that a reasonable person would find abusive.

PROCEDURES

I. Avenues of Redress

A. Internal

1. Employees who believe they are sexually harassed should make it clear that such behavior is unwelcome and should report the harassment to the appropriate supervisory level. In instances where the alleged harasser is the immediate supervisor, the violation should be reported to the harasser's supervisor by the most expeditious means possible. Allegations may also be reported directly to the Human Relations Manager or the Human Resource Management Services (HRMS) Director.
2. Employees may utilize the Employee Grievance Procedure (classified, non-probationary employees.) Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964 and is thus a grievable issue because it is a complaint of discrimination on the basis of sex. Per the Grievance Procedure, if a grievance deals with a charge of discrimination against the immediate supervisor, the employee shall be permitted to initiate the grievance with the next higher level of management. As specified in the Commonwealth of Virginia Employee Grievance Procedure, a grievance must be initiated within 30 calendar days of the action giving rise to the grievance.



B. External


1. Employees can utilize the State Employee's Discrimination Complaint Procedure, which is administered by the Office of Equal Employment Services of the Department of Human Resource Management. The complaint must be filed within 180 days of the alleged discrimination.
2. Employees can file a complaint with the U.S. Equal Employment Opportunity Commission. A complaint must be filed within 300 days of the alleged discrimination.

II. Agency Responsibility

- A. All employees of the Virginia Employment Commission are encouraged to ensure enforcement of this policy by reporting any known or suspected violations.
- B. Agency managers and supervisors must immediately investigate an allegation of sexual harassment with the counsel and/or assistance of the HRMS staff and take the necessary action to ensure that all instances of sexual harassment are addressed swiftly, fairly, and effectively. All allegations of sexual harassment must immediately be reported to the Human Relations Manager or the HRMS Director.
- C. All managers and supervisors of the VEC are directed to take affirmative action to ensure that the principles of this policy are fully implemented at all levels and locations of the VEC and to ensure an environment free from sexual harassment.

III. Response to Policy Violators

- A. Sexual Harassment is a serious offense. As a consequence, any employee who engages in such conduct shall be subject to corrective action. Depending on the circumstances involved, such corrective action



may include dismissal from State service. Consultation with the Human Relations Manager or the HRMS Director is required to determine if the Standards of Conduct should be applied as corrective action in any case of sexual harassment.

- B. Managers and supervisors who fail to respond appropriately to allegations of sexual harassment may also be subject to corrective action, including demotion or discharge.

IV. Distribution and Maintenance of Policy Statement

This policy statement will be disseminated to all agency employees. Each local office and the central office should display this policy statement publicly. This policy statement will be subject to review during Equal Opportunity (EO) Technical Assistance Reviews.

V. Resources for Information

For questions regarding this policy or any issues related to harassment employees may contact any of the following: VEC Human Resource Management Services, the Department of Human Resource Management, the Department of Employment Dispute Resolution, and the U.S. Equal Employment Opportunity Commission.

AGENCY RIGHT

The Virginia Employment Commission reserves the right to revise or eliminate this policy.

QUESTIONS AND ANSWERS ON SEXUAL HARASSMENT

Q. Why does the VEC need a sexual harassment policy?

A. Such a policy protects our employees, managers, and clients by describing the behaviors constituting sexual harassment and the potential consequences of those behaviors. Employees sometimes do not understand what behaviors constitute sexual harassment, and can interpret those behaviors in widely varying ways.

Q. What behaviors are included in sexual harassment?

A. Unwanted pressure for sexual favors; unwanted deliberate touching, leaning over, or cornering; unwanted leering or gestures; unwanted letters, telephone calls, or materials of a sexual nature, unwanted pressure for dates; unwanted sexual teasing, jokes, remarks or questions; sexual comments about a person's clothing, anatomy, or looks; looking a person up and down; personal questions about social or sexual life; turning work discussions to sexual topics; standing close or brushing up against a person; touching or rubbing oneself sexually around another person. The key to all these behaviors is if they are unwelcome. Conduct is unwelcome, if the recipient did not initiate it and regards it as offensive.

Q. Does sexual harassment only occur between males and females?

A. Sexual harassment can occur in a wide variety of circumstances and include many different variables, including same gender sexual harassment. A man or woman may be harassed by either a woman or a man and both types of harassment are prohibited by Title VII.

Q. If I compliment the way someone looks, can he/she charge me with sexual harassment?

A. A nonsexual compliment is not sexual harassment; the courts look at how a reasonable person would interpret such a remark. However, if I compliment the way you look today while running my eyes up and down your body or letting my gaze linger upon certain parts of your anatomy, that would cross over the line to sexual harassment.





Q. What do you mean by “reasonable person” above?

A. Sexual conduct should be evaluated from the perspective of the person complaining of harassment. Sexual harassment laws are not designed to protect the oversensitive employee; the test has been whether the conduct would be offensive to a “reasonable person”. The courts and EEOC have adopted the “reasonable person” standard for evaluating sexual harassment. Neither has elaborated on the definition of “reasonable person.” However, EEOC views a “reasonable person” as a hypothetical person in similar circumstances who has the perspective of the victim.

Q. When is a work environment “hostile”?

A. It is hostile when sexual harassment is severe and pervasive enough to alter the victim’s employment conditions and create an abusive work environment. This occurs when sexual conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment. It is not necessary that the sexual conduct be directed to the person making the complaint.

Unwelcome, intentional touching of an employee’s intimate body areas is sufficiently offensive to be hostile environment sexual harassment. More so than verbal remarks, a single unwelcome touching can seriously poison the victim’s work environment. Pornographic magazines and pictures, vulgar comments about men or women, pinups, sexually oriented calendars or lewd jokes can create a hostile work environment that amounts to sexual harassment.

Sexual harassment is one type of harassment based on sex. However, it is not the only type of unlawful harassment which is sex-based. Acts of aggression, intimidation, hostility, rudeness, name calling, or other types of abusive conduct not involving sexual activity or language, can give rise to Title VII liability when directed at employees because of their sex.

Q. What if an employee joins in sexual jokes and talk?

A. On occasion, an employee may join in jokes or talk of a sexual nature in the workplace. That may indicate the conduct is not offensive. However, that does

not mean the conduct should be tolerated by the office manager. If the manager observes such joking in the workplace, the participants should be counseled that such behavior is inappropriate in the workplace and therefore unacceptable behavior, even if nobody complains about it. This manager should stop all such activity immediately.

An employee may willingly participate in sexual conduct, but then stop. Sexual harassment can be found if the employee informs the people involved that any further sexual conduct is not welcome. Past participation in such conduct cannot be used to show that an employee would never be offended by sexual comments or that such conduct is generally welcome.

Actual participation in sexual conduct may be voluntary, but it can still be unwelcome sexual harassment. An employee may voluntarily participate in unwelcome sexual conduct because of fear of losing his or her job, a promotion, etc.

Q. How will I know if my behavior is unwelcome?

A. Ask yourself the following questions:

- 1) Would I want my behavior to be the subject of a column in the newspaper or on the evening news?
- 2) Would I behave the same way if the person I am in a relationship with were standing next to me?
- 3) Would I want someone else to act this way towards the person I am in a relationship with?
- 4) Is there equal power between me and the person I am interacting with?
- 5) Is there equal initiation and participation between me and the person I am interacting with?

A “no” answer to 1, 2, 3, and 4 means that your behavior is probably unwelcome by the recipient. A “no” answer to 5 means that your behavior is very likely unwelcome.

When in doubt, DON'T!!



Q. What if I didn't mean to be sexually offensive?

A. Remember that “unwelcome” is decided by the recipient of the behavior, not the person doing the behavior. Therefore, it is the impact of the behavior, not the intent of the person who did the behavior, that determines if sexual harassment has occurred.

Q. What should I do if I feel I have been sexually harassed?

A. Make it clear that such behavior is unwelcome and report it to the appropriate supervisory level. In instances where the alleged harasser is the immediate supervisor, the violation should be reported to the harasser's supervisor. Allegations may also be reported to the Human Relations Manager or the HRMS Director.

If you have any questions about this policy, call the Human Relations Manager at (804) 786-3466.

Guidelines on Dealing Effectively with Sexual Harassment Complaints

The following guidelines are intended for the use of agency supervisors and managers in conducting a fact-finding inquiry on a complaint of sexual harassment¹. Per the agency Sexual Harassment Policy, managers and supervisors must immediately investigate an allegation of sexual harassment with the counsel and/or assistance of the HRMS Office. All allegations of sexual harassment must be reported to the Human Relations Manager or the HRMS Director. Regardless of whether the complaint is made to management or directly to HRMS, the following guidelines will be used during the course of the fact-finding investigation.

GENERAL GUIDELINES

1. The most important thing for a supervisor to keep in mind when an employee makes a complaint is to take it seriously. It is not the supervisor's responsibility to determine whether the complaint is valid; all complaints should be taken seriously.

¹Agency supervisors and managers should consult with HRMS for guidance regarding allegations of sexual harassment by a non-employee.





2. Notify the Human Relations Manager or the HRMS Director and the appropriate managers immediately of the complaint. Begin the fact-finding inquiry within five work days (or as soon as possible) of being advised of the situation. To the extent possible, do not require the complainant and the accused to work together until the complaint is resolved.
3. Document all meetings. Meetings must be held in private. Meetings and interviews with persons involved in the complaint should not be video- or audio-taped to protect confidentiality.
4. While it is not possible to ensure complete confidentiality, keep the inquiry and the facts that it uncovers on a “need to know” basis. Emphasize to all those involved in the investigation, including the complainant, the accused, and witnesses, the need to keep discussions strictly confidential, backing up these instructions with a warning of use of the Standards of Conduct if necessary. One reason for this is the growing number of slander and libel charges being filed as a result of sexual harassment investigations. All parties should be advised that it is imperative they tell the truth regarding what they have personally seen or heard.
5. Some employees will talk to their supervisors about being sexually harassed, but state that they do not want to make a formal complaint. Once the employee informs their supervisor of alleged harassment, the supervisor is obligated to investigate. The agency, through the supervisor, has been made aware of the situation and is obligated to investigate the allegation, and take corrective action, if necessary. The VEC policy on sexual harassment should be discussed with the complainant, affirming that the agency must investigate once a problem arises and that the matter will be handled as discreetly as possible.
6. All documents related to the complaint must be maintained in a secure place. HRMS should be consulted on the disposition of the documents after the case is closed.

Interviewing the Complainant

1. The supervisor should adopt a nonjudgmental, professional attitude with the complainant. Acknowledge that bringing a sexual harassment



complaint is a hard thing to do, and thus it is normal to feel uncomfortable. Do not get caught up in the emotional aspects of the experience; suppress personal feelings about what is being reported and act solely as a fact gatherer.

2. Obtain a written statement from the complainant, outlining the allegation(s) and requested relief.
3. Make no statements about the accused's character, job performance, or personal life. Such statements could later be the subject of a lawsuit.
4. In the initial interview, the basic journalism questions - who, what, when, where, why and how - are important because they set a factual tone for the interview. The goal is to get enough factual information to determine where the situation stands without getting into a determination of whether the legal requirements of sexual harassment have been met. The complainant's responses to interview questions should be documented in writing, and signed by the complainant.
5. Elicit specific details regarding the alleged sexual harassment; include questions regarding the type of conduct, the frequency of occurrence, what was said or done, where it occurred, at approximately what time, where the complainant was touched (if the complaint involves touching), the date(s) that the conduct occurred, whether witnesses were present, and the time period over which the conduct occurred. Ask questions to determine whether or not there was a pattern of previous episodes and whether the complainant had knowledge of similar behavior by the accused towards others.
6. Determine the effect of the conduct on the complainant. Was the conduct received as a joke; did it embarrass, offend, frighten, or humiliate the complainant; was it truly unwelcome? Did the complainant participate in the conduct at any time? Did the conduct affect the complainant economically, non-economically, and/or psychologically?
7. Ask whether there was any prior consensual relationship between the parties. How long have the parties known each other? Is there a history of group or individual socializing?



8. Determine the chronology of events for the occurrence of the alleged conduct, its effect on the complainant, and the time when the complainant made the allegation. Try to elicit whether there might have been certain events that triggered the complaint, e.g., not being selected for promotion, denial of a preferred work assignment, love relationship gone awry, etc.
9. Explain to the complainant that the charges are serious and that the agency will conduct a thorough inquiry before reaching any conclusions, and that he/she will not be retaliated against for making the complaint.
10. Find out what the complainant wants as settlement of the charges. The complainant should be given as much information about the fact-finding process as possible. While the supervisor cannot promise that the complainant's name will not be brought out, reassurance should be given that the matter will be handled professionally, and that only those who "need to know" will be part of the process. How does the complainant want the situation resolved? Can the complainant continue to work for or with the accused?
11. Tell the victim to report any retaliation if it should occur.

Interviewing the Accused

1. As with the complainant, set a professional tone for all interviews, gather facts, be non-judgmental. Inform the accused that no conclusions have been made regarding the complaint.
2. Identify the relationship of the accused to the complainant (supervisor, co-worker, agency client, vendor, etc.)
3. Determine whether the accused directed, or had responsibility for, the work of other employees or the complainant, or had the authority to recommend employment decisions affecting others. If the accused is a supervisor, determine his/her specific duties at the time(s) of the alleged harassment.
4. Ask whether there was any prior consensual relationship between the parties. How long have the parties known each other? Is there a history of group or individual socializing?



5. Obtain a written, signed statement from the accused in response to the complaint. The allegations should be shared with sufficient specificity for the accused to respond fully to the complaint.
6. Keep each allegation separate and ask for a written response to each one separately.
7. The accused may deny the charges. Observe whether or not there is surprise, anger, disbelief, etc. in reaction. Describe the details of the allegation and note the areas of disagreement between the parties and pursue questioning in greater detail. Ask if there is any possible motive for bringing a complaint and ask for supporting evidence if there is an affirmative answer.
8. Inform the accused that you are obligated to remind him/her that the Governor's Executive Order Number One (02) prohibits the intimidation or harassment of anyone who files an EEO complaint or who takes part in an investigation, and such actions would be grounds for dismissal.

Interviewing Witnesses

1. Review the sexual harassment policy with the witness and ask if the witness is familiar with it.
2. Assure all witnesses that their cooperation is important and that they will not be retaliated against for giving a statement or testifying.
3. Describe the alleged events in summary fashion without identifying the individual(s) involved in the complaint, if possible. Use open-ended questions to elicit information, then move to more narrow and focused questions.
4. Obtain written, signed statements from any witnesses who support or refute any of the complainant's or the accused's allegations. This evidence is very critical; otherwise, it is simply the word of the complainant against that of the accused.

5. Remind the witness of the confidentiality requirements and that retaliation is prohibited.

Resolving the Complaint

1. If you offer to transfer the complainant as a remedy, obtain his/her consent in writing and ensure that the position is substantially similar to the prior position. Otherwise, the complainant may later file charges of retaliation, or at least feel that he/she was punished for making a complaint.
2. Because sexual harassment often happens in private with no witnesses, resolution often depends on the credibility of the two parties. A finding that sexual harassment occurred can be made based solely on the credibility of the victim's description of what happened. The account of the conduct must be sufficiently detailed and consistent to be believable. Lack of supporting evidence where such evidence should exist will weaken the allegation. The person conducting the fact-finding should look for evidence to support or disprove a claim. Do co-workers have any knowledge of the alleged incident(s)? Were other employees treated in a similar manner by the alleged harasser? Did the complainant discuss the alleged incident(s) with another person? Did anyone notice any change in behavior of the complainant at work or in the way the complainant and alleged harasser interact? Did anyone observe the complainant's behavior shortly after the alleged incident(s)?

If it cannot be proven that sexual harassment occurred, it should be documented that a complaint was made, and an investigation conducted with no determination made. The VEC policy on sexual harassment should be discussed with both parties, with emphasis on the agency's commitment to provide a work environment, which is free from intimidation or coercion in any form.

3. Sexual harassment is a serious offense. As a consequence, any employee who engages in such conduct shall be subject to corrective action, including disciplinary action under the Standards of Conduct. Depending on the circumstances involved, such corrective action options range from



written reprimands/warnings to suspension, transfer, demotion, or discharge. Discipline for the harasser should be appropriate and proportional to the seriousness of the offense. Consultation with the HRMS Director, or his/her designee, is required to determine the type of action that should be taken upon a finding of a valid complaint.

4. When a finding of sexual harassment is made, the complainant should be informed in writing of such and the agency has taken appropriate action. Specific information is not to be shared; the action taken is a confidential personnel matter.



agency overview

Agency History

The VEC was established as the Unemployment Compensation Commission of Virginia in 1936, assuming its current name in 1960. Pursuant to the Wagner-Peyser Act and the Social Security Act of 1935, the Commission was created both to provide employment services and administer the federal-state unemployment insurance program. Throughout its history, the Commission's administrative operations have been primarily federally funded through a federal unemployment tax (FUTA) paid by employers exclusively for this purpose.

VEC Mission

- We provide workforce services that promote maximum employment to enhance economic stability in Virginia.

VEC Vision

- We are a progressive, productive agency committed to quality and superior customer service.
- We promote an environment in which a person's worth and contributions are recognized.
- We are a team dedicated to being the best agency in Virginia Government and in our business worldwide.

VEC Values

We recognize that *ethical* values are the cornerstone of our organization by:

- Conforming to high professional standards; and
- Ensuring credibility, integrity, and honesty in all dealings.





We obtain *purpose* and *direction* through:

- Listening to our customers and employees;
- Understanding our mission and goals; and
- Communicating expectations and accountability.

We *achieve* results by:

- Contributing to society by responding to the needs of individuals;
- Being flexible and open to change;
- Demonstrating a positive, can-do approach;
- Empowering our people to be innovative; and
- Expecting high performance and productivity.

We foster a work environment that promotes individual *fulfillment* and *satisfaction* by:

- Recognizing that individuals are the foundation of the organization; and
- Enabling individuals to feel positive about themselves and their contributions.

We encourage balanced *interpersonal relationships* by:

- Supporting teamwork;
- Treating everyone with fairness, dignity, and respect; and
- Behaving in a caring, humanistic, and supportive manner.

Legislative Authority

The VEC Commissioner and staff administer and derive mandates from:

- OIC-Title 60.2 of the *Code of Virginia*, the Virginia Unemployment Compensation Act.
- The Social Security Act of 1935.

- Title III - Grants to States for Unemployment Compensation Administration
- Title IX - Miscellaneous Provisions Relating to Employment Security
- Title XII - Advances to States' Unemployment Funds

- The Federal Unemployment Tax Act (FUTA).
- The Workforce Investment Act (WIA).

- Title II - Workforce Investment Systems
- Title III - Workforce Investment Related Systems


Programs

The *Code of Virginia* today sets forth the following responsibilities for the agency:

Section 60.2-113. Employment stabilization—The Commission shall take all necessary steps through its appropriate divisions and with the advice of such advisory boards and committees as it may have to:

1. Establish a viable labor exchange system to promote maximum employment for the Commonwealth of Virginia with priority given to those workers drawing unemployment benefits;
2. Maintain a solvent trust fund financed through equitable employer taxes which provide temporary partial income replacement to involuntarily unemployed covered workers;
3. Coordinate and conduct labor market information research studies, programs and operations, including the development, storage, retrieval and dissemination of information of the social and economic aspects of the Commonwealth and publish data needed by employers, economic development, education and training entities, government, and other users in the public and private sectors;



- 
4. Determine and publish a list of jobs, trades, and professions for which a high demand of qualified workers exists or is projected by the Commission. The Commission shall consult with the Virginia Workforce Council in making such determination. Such information shall be published biennially and disseminated to employers; education and training entities, including public two- and four-year institutions of higher education; government agencies, including the Department of Education, and public libraries; and other users in the public and private sectors;
 5. Prepare office short- and long-range population projections for the Commonwealth for use by the General Assembly and state agencies with programs which involve or necessitate population projections;
 6. Encourage and assist in the adoption of practical methods of vocational guidance, training, and retraining; and
 7. Develop a plan for implementation during times of economic recession, natural disaster, or military mobilization whereby necessary workers can be provided.

Structure of the Agency

A single Commissioner heads the VEC, the largest agency in the Commerce and Trade Secretariat. The agency's executive team includes the:

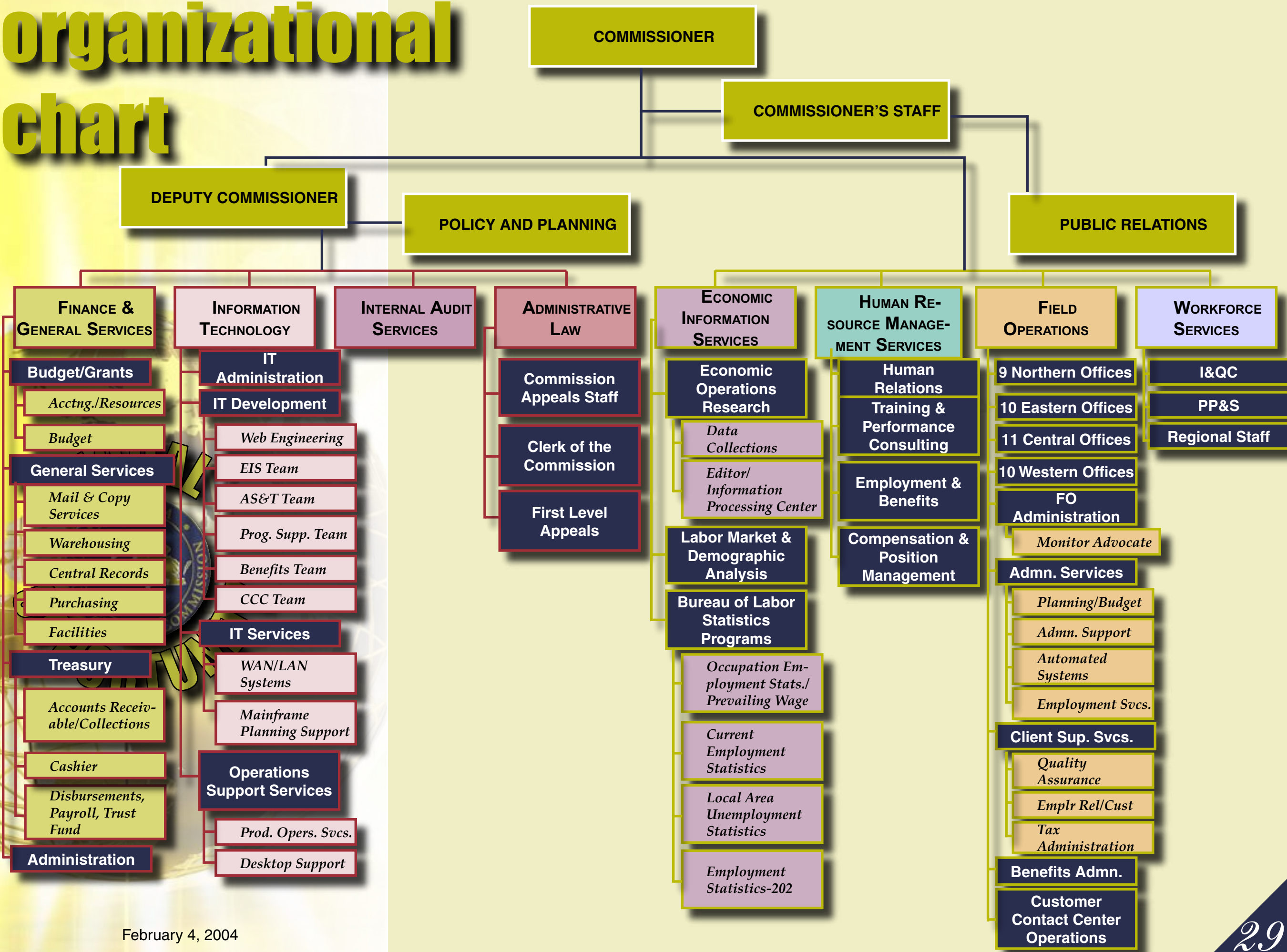
Deputy Commissioner
Assistant Commissioner for Field Operations
Chief Administrative Law Judge, Administrative Law Division
Director, Economic Information Services
Director, Finance and General Services
Director, Human Resource Management Services
Director, Information Technology
Director, Policy and Planning
Director, Internal Audit
Director, Workforce Investment Act

The Virginia Workforce Council established by the Governor shall assist the Governor in complying with the provisions of the federal Workforce Investment Act.

(P.L.105-220), referred to in the bill as “WIA,” including the creation of Virginia’s Workforce Development Program. Appointed members of the council shall serve at the pleasure of the Governor without compensation.



organizational chart



eeo-4 job categories


EEO-4 categories for state positions are determined by the Department of Human Resource Management. The EEO-4 job categories are defined as follows:

Officials and Administrators: (EEO-4 Category A) Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, assessors, inspectors, examiners, wardens, superintendents, unit supervisors, kindred workers, and administrative faculty.

Professionals: (EEO-4 Category B) Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers, or instructors and kindred workers.

Technicians: (EEO-4 Category C) Occupations which require a combination of basic scientific or technical knowledge and a manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, draftsmen, surveyors, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, medical, dental, electronics and physical science technicians, and kindred workers.





Protective Service Workers: (EEO-4 Category D) Occupations in which workers are entrusted with public safety, security, and protection from destructive forces. Includes: police officers, firefighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Paraprofessionals: (EEO-4 Category E) Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience than is normally required for professional or technical status. Such positions may fall within an identical pattern of staff development and promotion under a “New Careers” concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical: (EEO-4 Category F) Occupations in which workers are responsible for internal and external communications, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk typists, stenographers, court transcribers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers: (EEO-4 Category G) Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairmen, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance: (EEO-4 Category H) Occupations in which workers perform duties which result in or contribute to the convenience, hygiene, or safety of the general public or which contribute to the upkeep and care of buildings, facilities, or grounds of public property. Workers in this group may operate machinery. They include: Chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial employees, gardeners, and groundskeepers, refuse collectors, construction laborers, and kindred workers.

vec employees

race & gender



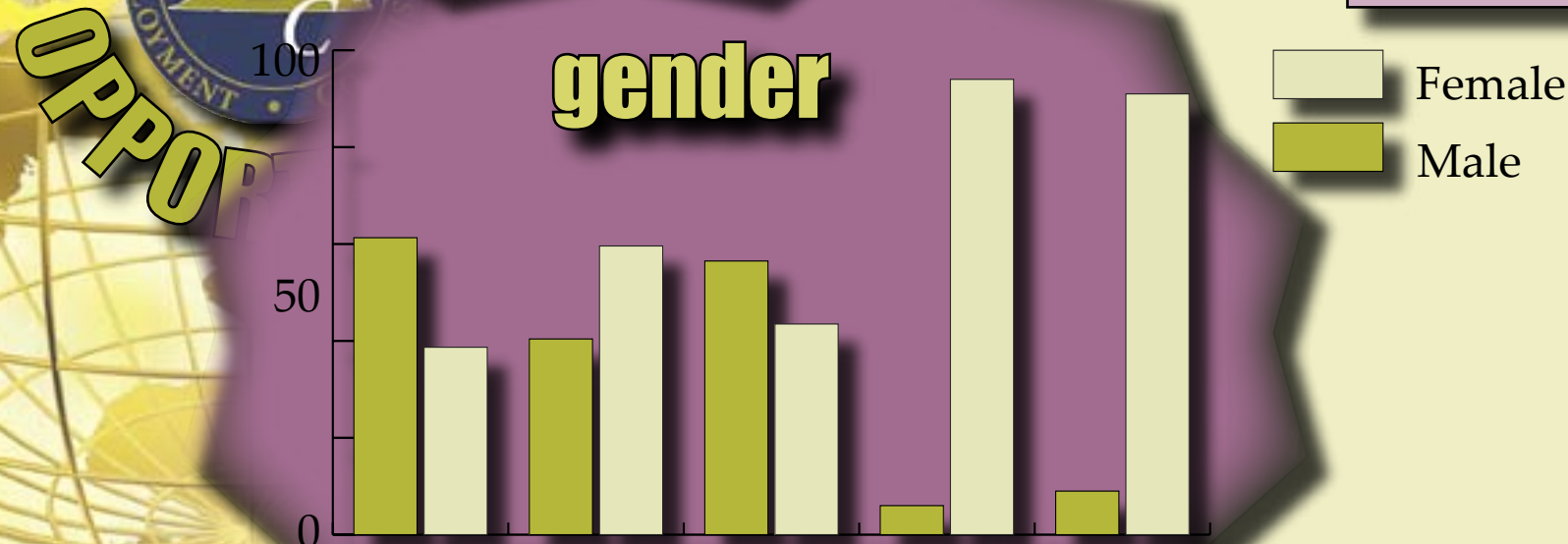
	White	Minority	Total
Total	63%	37%	100%
Males	26%	10%	36%
Females	37%	27%	64%

race



	Managers	Professionals	Technicians	Paraprofessionals	Clerical
Minority	17%	32%	38%	57%	65%
White	83%	68%	63%	43%	35%

gender



	Managers	Professionals	Technicians	Paraprofessionals	Clerical
Female	37%	61%	42%	90%	92%
Male	63%	39%	58%	10%	8%



EEO-4 job categories with fewer than 5 employees are not represented.
Employment data as of June 30, 2003.

comparative employment analysis

CATEGORY A (Officials and Administrators)														
Total Employees	White Males	White Females	Minority Males	Minority Females	Total Employees	White Males	White Females	Minority Males	Minority Females	Total Employes	White Males	White Females	Minority Males	Minority Females
6-30-2001					6-30-2002					6-30-2003				
75	39	25	7	4	79	44	24	6	5	84	45	25	8	6
Percent	52	33	9	5	Percent	56	30	8	6	Percent	54	30	10	7
CATEGORY B (Professionals)														
626	185	250	68	123	635	190	252	67	126	669	195	263	69	142
Percent	30	40	11	20	Percent	30	40	11	20	Percent	29	39	10	21
CATEGORY C (Technicians)														
23	8	5	5	5	22	7	5	5	5	24	9	6	5	4
Percent	35	22	22	22	Percent	32	23	23	23	Percent	38	25	21	17
CATEGORY E (Paraprofessionals)														
50	2	23	1	24	54	3	22	2	27	61	2	24	4	31
Percent	4	46	2	48	Percent	6	41	4	50	Percent	3	39	7	51
CATEGORY F (Office and Clerical)														
144	2	51	11	80	141	1	50	10	80	142	1	49	10	82
Percent	1	35	8	56	Percent	1	35	7	57	Percent	1	35	7	58
CATEGORY G (Skilled Craft Workers)														
1	1	0	0	0	1	1	0	0	0	1	1	0	0	0
Percent	100	0	0	0	Percent	100	0	0	0	Percent	100	0	0	0
CATEGORY H (Service/Maintenance)														
2	0	0	2	0	2	0	0	1	1	2	0	0	1	1
Percent	0	0	100	0	Percent	0	0	50	50	Percent	0	0	50	50
TOTALS														
921	237	354	94	236	934	246	353	91	244	983	253	367	97	266
Percent	26	38	10	26	Percent	26	38	10	26	Percent	26	37	10	27


communication of the plan

The VEC will communicate its Equal Opportunity Plan and Policy internally and externally. To ensure that all employees, applicants for employment, and other interested parties are aware of the Equal Opportunity Plan and Policy, the following steps will be taken:

Internal Dissemination

- The primary means of communicating the Equal Opportunity Plan to employees will be the VEC intranet system (VECNET).
- Field Office Managers and Central Office division managers should download a copy of the Equal Opportunity Plan to ensure that it is available to employees who do not have access to VECNET.
- The Nondiscrimination and Equal Opportunity Policy will be posted on all of VEC's employee bulletin boards statewide. These bulletin boards will also provide employees with information on employment opportunities, including promotions and training programs. Additionally, a statement will be posted informing employees that copies of the Equal Opportunity Plan are available for review.
- The Nondiscrimination and Equal Opportunity Policy will be included in new employee orientation packages to inform new employees of VEC's commitment to equal employment opportunity.
- Managers and supervisors should include equal employment opportunity training in their staff meetings with employees at least annually.



- 
- HRMS will conduct an Equal Employment Opportunity assessment of a field office each month, and provide a report to management.
 - HRMS will conduct training for managers and supervisors that will include discussions on the intent, individual responsibility, and effective implementation of VEC's Nondiscrimination and Equal Opportunity Policy.
 - HRMS will periodically publish news articles in the *VEC Journal*, a quarterly publication for employees.

External Dissemination

- All advertisements for recruitment, job opportunity announcements, and recruitment literature will include the statement, "The VEC is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities."
- The Equal Opportunity Plan will be available to the public on the VEC's Web site.
- Copies of the Nondiscrimination and Equal Opportunity Policy will be available at job fairs and other recruitment events.

implementation of the plan

All managers and supervisors are responsible for carrying out the guiding principles of the plan and the agency's Nondiscrimination and Equal Opportunity Policy. However, to ensure the successful implementation of the plan, designated persons have responsibility for various aspects of the plan.

- The Commissioner of the Virginia Employment Commission has ultimate responsibility for the implementation of this plan. The Commissioner is responsible for reviewing and approving the plan. The Commissioner has assigned the Director of Human Resource Management Services the responsibility of implementing, monitoring and complying with the administration of the VEC Equal Opportunity Plan.
- The Human Resource Management Services Director is responsible for overall leadership of the equal employment opportunity program for VEC. This responsibility includes the supervision, review, and monitoring of all activities assigned to the Human Relations Manager.
- The Human Relations Manager is the Equal Opportunity Officer for the VEC and has responsibility for the development and monitoring of the Equal Opportunity Plan. An annual assessment report for the agency will be submitted to the Commissioner by September 30 covering the preceding fiscal year's accomplishments towards goals. Duties also include the following activities:
 1. Reviews the plan and modifies it as necessary to account for relevant legislation and judicial decisions.





2. Reviews employment statistics, selection procedures, and adverse impact analyses to assess the progress in achieving the plan objectives.
3. Investigates and recommends final disposition of complaints of discrimination filed with VEC, state and/or federal agencies by employees, applicants for employment, and recipients of VEC services.
4. Serves as VEC's liaison with the U.S. Equal Employment Opportunity Commission, the U.S. Department of Labor Civil Rights Center, the VA Department of Human Resource Management Office of Equal Employment Services, and other state and federal agencies regarding the investigation and resolution of complaints of discrimination.
5. Serves as VEC's Mediation Program Administrator and Employee Grievance Procedure Coordinator.
6. Responsible for policy development, implementation, interpretation, and administration in affected areas.


human resources

The Virginia Employment Commission's Division of Human Resource Management Services (HRMS) adheres to the policies and procedures of the State Department of Human Resource Management. It is the intention of HRMS to comply with Executive Order 1 (02) and Department of Human Resource Management Policy 2.05, Equal Employment Opportunity.

Furthermore, as a condition of receipt of its federal funding, the Virginia Employment Commission must also certify that it adheres to merit system principles by:

- (a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- (b) Providing equitable and adequate compensation.
- (c) Training employees, as needed, to assure high quality performance.
- (d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
- (e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, gender, religion, age or disability and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.



- 
- (f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.


Each year, HRMS will assess its progress in attaining goals and objectives that are outlined in the Equal Opportunity Plan. HRMS will also compare the agency's current workforce to the relevant labor market.

HRMS applies the principles of equal employment opportunity in administering all terms and conditions of employment including: recruitment and selection, recordkeeping, training and career development, performance evaluations, classification and compensation, and standards of conduct and performance. Additionally, HRMS will ensure the equal availability of employee benefits to all eligible employees. The functional areas in HRMS are as follows:

A. Recruitment

Recruitment to fill classified positions within the Virginia Employment Commission is primarily the responsibility of Human Resources. HRMS will work closely with the hiring manager to identify effective recruitment strategies, to address under-utilization issues when present, and to ensure suitable candidates are identified. Recruitment efforts are carried out in compliance with the provisions of Department of Human Resource Management Policy 2.10 (*Hiring*). The recruitment of wage employees has been delegated to the agency division directors/office managers. In either event, recruitment for classified and wage employees will be conducted to obtain qualified employees for the Virginia Employment Commission on a non-discriminatory basis. All recruitment postings and literature will apprise the public that the Virginia Employment Commission is an equal opportunity employer/program and auxiliary aids and services are available upon request to individuals with disabilities.

Classified positions will be advertised in accordance with Department of Human Resource Management Policy 2.10 (*Hiring*). As a general practice, unless extenuating circumstances warrant, all positions will be posted for state employees



and the general public. At a minimum, the agency will post all positions on RECRUIT, America's Job Bank (AJB), the VEC Homepage, and agency bulletin boards. When employment analysis ratios show that under-utilization of minorities or females exists in a geographic location for a given EEO-4 Category, the agency will take steps to ensure minority and/or female organizations are made aware of the employment opportunity.

The Virginia Employment Commission also reserves the right to restrict recruitment to either internal or state employees for positions and/or situations that warrant restrictive recruitment approaches. Such situations may include reorganization, agency sponsored career development programs, and internal transfers. Under-utilization should always be considered before making the decision to restrict recruitment.


The prohibition against employment discrimination applies broadly to all aspects of the recruitment process to include consideration of employees affected by layoff.

The agency will comply with Department of Human Resource Management Policy 1.30, *Layoff*, when applicants submit Inter-agency Placement Screening Cards or Preferential Hiring Cards, when recalling agency employees on leave without pay as a result of layoff.

Human Resource Management Services shall keep a record of recruitment efforts by maintaining the information contained on the Applicant Flow/Agency IRA Form for a period of not less than three years. This information will be reported to the Human Relations Manager on a yearly basis.

B. Selection

Human Resource Management Services shall review employment parity goals and employment data on a continuing basis and take whatever actions necessary to ensure progress in achieving Equal Opportunity Plan objectives. Recruitment and selection documentation, with all materials used in the selection process, will be reviewed by Human Resource Management Services for job relatedness in compliance with Department of Human Resource Management Policy 2.10 (Hiring). In those instances where there are questions of discrimination on the basis of race, gender, color, national origin, religion, age, disability, or political affiliation,



the Recruitment Coordinator will forward the selection file documentation in question with all materials to the Human Resource Director. The Human Resource Director, Human Relations Manager and the applicable Division Director will review the case and make a final decision.

Training in proper employment interviewing techniques and selection procedures will be scheduled periodically by Human Resource Management Services and can be made available on request.

In accordance with Department of Human Resource Management, Policy 2.10 (*Hiring*), if interview panels are used in the selection process, the hiring supervisor should, as often as possible, include individuals of different genders and races to serve on the panel. One panel member will be designated as chairperson. The hiring supervisor must ensure that panel members are familiar with the job in question, as well as selection and evaluation criteria. Panel members must be apprised of their responsibilities and the scope of their influence on the selection process. Panels act in an advisory capacity only. The hiring supervisor is responsible for the final selection decision. Panel members are expected to keep all matters related to the selection in strict confidence, and are not to discuss the panel deliberations with candidates or other employees.

Prior to conducting employment interviews, interviewers will be provided with job-related written questions. All applicant responses and data pursuant to the selection shall be documented. Interviewers shall document the rationale for their recommendations based on the job-related criteria. At the conclusion of the selection, all data required will be returned to Human Resource Management Services. Any tests, work samples and/or skill demonstrations to be used during the selection process must be approved by Human Resource Management Services.

C. Promotions

In accordance with Department of Human Resource Management Policy 3.05 (*Compensation*), all agency employees will be afforded promotion opportunities on a non-discriminatory basis. A promotion is an employee's move from a position in one pay band to a position in a higher pay band only after being selected for the higher position through the competitive recruitment process.



D. EEO Recordkeeping

All selection data are maintained by race and gender for a minimum of three years. Records regarding complaints of discrimination are retained for three years following the disposition of the complaint.

Confidential information on VEC applicants for employment is maintained in an automated tracking system that is password protected. Access to the data base is limited to authorized staff in HRMS.

In accordance with the Americans with Disabilities Act (ADA), information from all employee medical examinations and inquiries are kept separate from general personnel files and are treated as confidential medical records.

E. Training and Career Development

The agency is responsible for providing training opportunities for managers and supervisors necessary to maintain competencies in the areas of recruitment and selection, salary determinations, performance evaluations, Standards of Conduct, grievance procedure, leave administration, sexual harassment and equal employment opportunity.

Training for all Virginia Employment Commission employees will be in accordance with the provisions of Executive Order Number 1 (02) and Equal Opportunity Plan guidelines. Information on training opportunities should be made available to all employees through a variety of sources. Guidance, counseling, and training on EEO will be made available through the Human Relations Manager. On-the-job training remains the primary responsibility of supervisors and managers.

VEC Training and Performance Advisory Committee

The VEC Training and Performance Advisory Committee serves under the leadership of the Training and Performance Consulting Manager. It is comprised of eleven members nominated by their respective division director.

Each division has one member with the exception of Field Operations which has

one member from each region and one from central office, totaling five members. The committee membership is representative of the agency's demographic make-up. Members serve a two-year term with half the membership rotating off each year.

The purpose of the Committee is to:

- Focus on the “big” picture of training and performance improvement strategies;
- Assist in identification of agency and individual training needs;
- Assure equitable access to and allocation of training resources;
- Provide recommendations about training delivery options and communication mechanisms; and
- Serve as support/advisors for special projects.


The duties of the Committee members may include:

- Attend regularly scheduled committee meetings;
- Serve as points of contact for the division/region they represent to provide two-way communication (collect training issues/needs and bring them before the Committee; provide feedback; etc.);
- Review nominations and make recommendations for the Commissioner's Outstanding Achievement Awards;
- Advise on training policy;
- Serve on curriculum development task forces; and
- Attend and critique pilot programs.

F. Performance Evaluations

Performance evaluations are invaluable tools for both management and employees. They can be used to identify strengths and weaknesses, chart steps to improve future performance, and prepare employees for promotional opportunities.





The VEC performance cycle is October 1- September 30. Within one month of the last performance evaluation, a supervisor should discuss the Performance Plan with the employee, and give the employee a copy of the Plan. New employees should be given a Performance Plan within 30 days of beginning the position. HRMS staff are available to assist managers and supervisors in developing evaluation criteria.

Managers and supervisors will evaluate employees in a non-discriminatory manner, in accordance with Department of Human Resource Management Policy 1.40, Performance Planning and Evaluation. The Performance Evaluation system will not, under any circumstances, be used for retaliatory purposes.

G. Classification and Compensation

Positions within the agency are reviewed in accordance with Department of Human Resource Management Policy 3.05 and DHRM's Human Resource Management Manual. HRMS staff review classification and compensation on an ongoing basis, as individual positions change, and as required by organizational change, to ensure that personnel actions are not based on prohibited factors such as race, gender, age or disability.

The VEC implemented major classification and compensation changes in 2000-2001 as the agency transitioned into the new classified compensation plan developed by The Commission on the Reform of the Classified Compensation Plan, whose members included General Assembly members and Cabinet Secretaries. The Commission, assisted by a Technical Advisory Committee (TAC) of human resource professionals and an Employee Advisory Committee of classified state employees, did extensive research on modern pay practices and developed a new classified compensation plan to attract and retain qualified employees, reward sustained high performance, and support line management in the accomplishment of organizational objectives.



Some highlights of the new plan are summarized below:

- 1) A new, stepless pay structure that places the existing 23 pay grades into nine pay bands, and consolidates 1,650 existing classes into approximately 275 new broader groupings.
- 2) Implementation of new job groupings to support career growth.
- 3) A new performance management program with three (3) rating levels to replace the five (5) levels in the former program.
- 4) New pay practices that include in-range adjustments, rewards and recognition programs, and more flexible practices regarding starting pay, promotion, role change (reallocation), and voluntary transfer.
- 5) Availability of new salary survey information to ensure that classified salaries are competitive with appropriate public and private sector markets.


HRMS staff provided extensive training for all VEC managers and employees in the new compensation system, including a separate session on performance management.

HRMS tracks all pay actions to ensure that they are not based on prohibited factors such as race, gender, age or disability.

H. Standards of Conduct

When applied consistently and fairly, the Standards of Conduct can be very helpful in assisting supervisors in maintaining a productive workforce. In some instances, it may be appropriate to provide counseling to employees who are experiencing problems on the job. A reasonable amount of time should be allowed for the employee to respond positively to counseling. In the event counseling fails to yield the desired results, the provisions of Department of Human Resource Management, Policy 1.60 (Standards of Conduct) and the VEC guidelines on issuing discipline and responding to grievances, should be considered.

Managers and supervisors must comply with this policy and VEC guidelines when issuing written notices. Prior to issuing a written notice, any extenuating and mitigating circumstances should be considered. Managers must consult with their chain of command and HRMS prior to issuance of a Standards of Conduct written notice.



I. Grievances and Complaints

Any classified, non-probationary employee may file a grievance, in accordance with the State Employee Grievance Procedure. A grievance alleging discrimination or retaliation by the immediate supervisor may be initiated with the next level supervisor.

Employees may receive counseling on the grievance procedure from the VEC Equal Opportunity Specialist, or they may contact the Department of Employment Dispute Resolution.

Any employee, or applicant for employment, who feels that he/she has been discriminated against is entitled to file a complaint. Discrimination complaints may be filed with the Human Relations Manager.

Complaints may also be filed with the Department of Human Resource Management, Office of Equal Employment Services, the United States Department of Labor, Civil Rights Center, or the United States Equal Employment Opportunity Commission. The VEC complaint process is included in Appendix A.

Any employee experiencing a work-related conflict, including allegations of discrimination, may request a mediation. Mediation is a process in which a trained neutral (mediator) assists parties in conflict in reaching a resolution. The VEC Mediation Program is included in Appendix B.

All managers should notify the Human Relations Manager as soon as possible of any EEO complaints they have received. Also, they should immediately report all contacts with federal regulatory agencies concerning EEO matters.

All employees are advised of their grievance and complaint rights in the *VEC New Employee Orientation* booklet.

Additional information about the grievance procedure is available from:

The Department of Employment Dispute Resolution

830 East Main Street, Suite 400

Richmond, VA 23219

(804) 786-7994 V/TDD

888-23-advice V/TDD

www.edr.state.va.us

Complaints may also be filed with:

Department of Human Resource Management

Office of Equal Employment Services (EES)

101 North 14th Street

James Monroe Building

Richmond, VA 23219

(804) 225-2131

(804) 371-7671 V/TDD

800-533-1414

www.dhrm.state.va.us

Richmond District Office

Equal Employment Opportunity Commission

830 East Main Street, Suite 600

Richmond, VA 23219

(804) 771-2200

(804) 771-2227 TDD

800-669-4000

www.eeoc.gov

Norfolk District Office

Equal Employment Opportunity Commission

Federal Building

200 Granby Street, Suite 739

Norfolk, VA 23510

(757) 441-3470

(757) 441-3578 TDD

www.eeoc.gov

Washington D.C. Area Office

Equal Employment Opportunity Commission

1400 L Street, NW, Suite 200

Washington, D.C. 20005

(202) 275-7377

(202) 275-7518 TDD

www.eeoc.gov



reasonable accommodation guidelines

Section 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act (ADA) prohibit discrimination against qualified applicants and employees on the basis of disability. Under the ADA, an individual with a disability is a person who has:


- a physical or mental impairment that substantially limits one or more major life activities;
- a record or such an impairment; or
- is regarded as having such an impairment.

The determination of whether a person has a disability *must be made on a case-by-case basis*. It cannot be assumed that everyone with a particular type of impairment is automatically included or excluded from the ADA's definition of disability. Also, as a result of recent Supreme Court decisions, the determination of whether a person has an ADA disability must take into consideration whether the person is substantially limited in a major activity when using a mitigating measure, such as medication, a prosthesis, or a hearing aid.

Employers must make reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities, unless the employer can show that the accommodation would impose an undue financial and administrative burden.

Reasonable accommodation means any change or adjustment to a training or work environment that permits a qualified applicant or employee with a disability to participate in the application process, to perform the essential functions of the job or to enjoy the benefits or privileges of employment. Examples include:



- 
- acquiring or modifying equipment or devices
 - job restructuring
 - modified work schedules
 - providing qualified reader or interpreters
 - making the workplace accessible to and usable by individuals with disabilities

The disabled individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation.” Requests for reasonable accommodation do not need to be in writing.

When the disability and/or need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation.



DECISION TABLE FOR REASONABLE ACCOMMODATION PROCESS*

Considerations/Steps	If NO, then . . .	If YES, then . . .
1. Is there a problem performing any particular function?	No need for reasonable accommodation.	GO TO STEP 2. Begin reasonable accommodation process.
2. Can job be accommodated by removing one or more marginal functions?	Determine if marginal function is really an essential function. If so, GO TO STEP 3.	Remove and reassign. GO TO STEP 3.
3. Is a particular function essential?	GO TO STEP 2.	GO TO STEP 4 for this particular function.
4. Is it possible to modify the existing facilities?	GO TO STEP 5.	Modify the facilities. If additional accommodation is needed, GO TO STEP 5.
5. Is there a product that would solve the problem?	GO TO STEP 6.	Purchase the product. If additional accommodation is needed, GO TO STEP 6.
6. Is it possible to use, or combine, available products differently than they are usually used?	GO TO STEP 7.	Purchase and integrate the products. If additional accommodation is needed, GO TO STEP 7.
7. Is it possible to modify a product?	GO TO STEP 8.	Purchase and modify the product. If additional accommodation is needed, GO TO STEP 8.
8. Is it possible to design a new product?	GO TO STEP 9.	Design and produce the new product. If additional accommodation is needed, GO TO STEP 9.
9. Is an alternative open position available?	GO TO STEP 10.	Investigate the possibility. If accommodations are needed, GO TO STEP 1.
10. Does situation need to be redefined?	GO TO STEP 11.	Redefine the situation. GO TO STEP 1.
11. Was Job Accommodation Network contacted?	Contact J.A.N. (800-232-9675)	GO TO STEP 12.
12. Document the reasonable accommodation process.	GO TO STEP 11.	GO TO NEXT SITUATION. START AT STEP 1.

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DISABILITY LAWS AT-A-GLANCE

LAW	This law covers . . .	Contact Information
Architectural Barriers Act (ABA)	Post Office buildings and other federal buildings	U.S. Access Board (800) 872-2253 (800) 993-2822 (TTY) www.access-board.gov
Rehabilitation Act	Federal employment (including contractors), federally-funded programs and services	U.S. Department of Justice (DOJ) (800) 514-0301 (800) 514-0383 (TTY) www.usdoj.gov/crt/ada/adahom1.htm
Individuals with Disabilities Education Act (IDEA)	Special education services (from birth to 21 years of age)	U.S. Department of Education (DOE) Office of Special Education and Rehabilitative Services (800) 872-5327 (800) 437-0833 (TTY) www.ed.gov/index.html
Air Carrier Access Act (ACAA)	Air transportation issues, including boarding assistance, accessibility in new aircraft and new, or altered, airports	U.S. Department of Transportation, Aviation Consumer Protection Division Hotline (202) 366-4000 www.dot.gov/airconsumer
Fair Housing Act (FHA)	Private federal or state and local government-funded housing	U.S. Department of Housing and Urban Development (HUD) (800) 669-9777 www.hud.gov/hdiscrim.html



AMERICANS WITH DISABILITIES ACT (ADA)

Title I	State/local government and other employers with 15 or more employees	Equal Employment Opportunity Commission (EEOC) (800) 699-4000 (800) 800-3302 (TTY) www.eeoc.gov
Title II	State/local government programs and services, including public transportation	U.S. Department of Justice (DOJ) (800) 514-0301 (800) 514-0383 (TTY) www.usdoj.gov/crt/ada/adahom1.htm
Title III	Public accommodations (e.g., businesses, movie theaters, restaurants, etc.)	U.S. Department of Justice (DOJ) (800) 514-0301 (800) 514-0383 (TTY) www.usdoj.gov/crt/ada/adahom1.htm
Title IV	Telephone relay service requirements	Federal Communications Commission (FCC) (888) 225-5322 (888) 835-5322 (TTY) www.fcc.gov/ www.fcc.gov/cgb/dro/title4.html



WORKERS' COMPENSATION COMPARED TO THE ADA*

Workers' Compensation <i>A State Benefit Statute</i>	ADA <i>A Federal Civil Rights Statute</i>
Purpose: to compensate for loss due to work injury/illness.	Purpose: to enable people with disabilities to be employed by removing physical, program and attitudinal barriers; and providing reasonable accommodation.
Compensates personal injury, death by accident or illness arising from employment.	Does not compensate costs associated with disability but does provide redress from employer discrimination.
Assumes that impairments are the cause of work limitations.	States that disability does not necessarily mean inability to work.
Requires no reasonable accommodation.	Requires reasonable accommodation.
Defines disability as a work-caused injury or illness.	Defines disability as substantially limiting major life activities, a history of such, or being perceived as such.
Employable individual is one who can perform useful and customary employment (all tasks). No consideration of marginal or essential tasks.	Qualified means the individual need perform only the essential tasks, with or without reasonable accommodation.
Possible employer liability if worker returns to a job that may cause further injury.	Puts the employer at risk if he/she does not return the worker to employment if the employee can perform the essential job functions, unless a direct threat.
Focuses on the impairment—what the worker cannot do. The worker must prove he/she is incapable	Emphasizes abilities. Limitations are considered, but only as related to essential functions, or factors, to be ameliorated.
Encourages identifying conditions which justify compensation and job retraining.	Encourages keeping workers employed.

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RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

Access Board Technical Assistance

800-USA-ABLE (800-872-2253/800-993-2822 TDD)
Monday, Tuesday, Thursday, Friday 10am-5:30pm
Wednesday 10am-2pm
ta@access-board.gov
www.access-board.gov

ADA Disability and Business Technical Assistance Center for the Mid-Atlantic Region

800-949-4232 (V/TDD)
www.adainfo.org

Directory of Qualified Interpreters for the Deaf and Hard of Hearing

The Virginia Department for the Deaf and Hard of Hearing
800-552-7917 (V/TDD)
www.vddhh.org/ip-dqi.htm

IBM Special Needs Systems for HR Professionals

800-426-4832
www.austin.ibm.com/sns

Job Accommodation Network (JAN)

800-526-7234 (V/TTY)
www.jan.wvu.edu

Rehabilitation Center for the Blind

Assistive Technology Program Specialist
(804) 371-3326
(804) 371-3151 (V/TDD)
www.vrcbvi.org

Virginia Assistive Technology Project

(804) 662-9990
www.vats.org

Virginia Department for the Deaf and Hard of Hearing

Outreach Programs Coordinator
(540) 332-9993
800-552-7917 (VRC/TDD)
www.vddhh.org

Woodrow Wilson Rehabilitative Center

Assistive & Rehabilitative Technology Services
(540) 332-7390, (800) 345-9972, (800) 811-7893 (TDD)
www.wwrc.net



adverse impact analysis

The impact ratio analysis is a statistical method used by the EEOC to determine whether minorities or females have experienced adverse impact in employment practices. The method is also referred to as the “Four-Fifths Rule” or “80% Rule.”

The selection rates of minorities and females are compared to the group with highest (or lowest for negative actions) rate of selection. According to the rule, if the comparison indicates that the rate of selection for minorities and females is less than four-fifths (80%), the selection process has an adverse impact on minorities and females.

The 80% rule is only useful for determining adverse impact, and does not determine unlawful discrimination.



applicant flow/ agency ira form

Reporting period: 7/1/02-6/30/03

EEO-4 Code	GENDER					RACE				
	#Females Applied	#Males Applied	#Females Inter- viewed	#Males Inter- viewed	Agency IRA	#Minori- ties Applied	#Cauca- sians Applied	#Minori- ties Inter- viewed	#Cauca- sians Inter- viewed	Agency IRA
A	305	303	38	65	0.57*	207	337	30	66	0.70*
B	4711	2573	476	271	0.91	3404	3191	348	355	0.91
C	22	77	3	2	NA	38	55	2	3	NA
D										
E	434	90	61	10	NA	328	140	40	24	0.71*
F	558	57	7	0	NA	293	266	0	7	0.00*
G										
H										

*Information based on data voluntarily provided by applicants; an impact ratio of less than .80 indicates adverse impact

selected/ agency ira form

Reporting period: 7/1/02-6/30/03

EEO-4 Code	GENDER					RACE				
	#Females Inter- viewed	#Males Inter- viewed	#Females Selected	#Males Selected	Agency IRA	#Minori- ties Inter- viewed	#Cauca- sians Inter- viewed	#Minori- ties Selected	#Cauca- sians Selected	Agency IRA
A	38	65	5	7	NA	30	66	4	8	NA
B	476	271	82	40	NA	348	355	52	70	0.75*
C	3	2	0	1	0.00*	2	3	0	1	0.00*
D										
E	61	10	9	2	0.75*	40	24	5	6	0.52*
F	7	0	2	0	NA	0	7	0	2	0.00*
G										

*Information based on data voluntarily provided by applicants; an impact ratio of less than .80 indicates adverse impact

in-band adjustments agency ira form

Reporting period: 7/1/02-6/30/03

EEO-4 Code	GENDER					RACE				
	#Females in Category	#Males in Category	#Females In-Band Adjust- ment	#Males In-Band Adjust- ment	Agency IRA	#Minori- ties in Category	#Cauca- sians in Category	#Minori- ties In-Band Adjust- ment	#Cauca- sians In-Band Adjust- ment	Agency IRA
A	30	52	4	6	NA	14	68	2	8	NA
B	405	264	12	6	NA	211	458	8	10	NA
C	10	14	0	2	0.00*	9	15	1	1	NA
D										
E	55	6	2	0	NA	35	26	0	2	0.00*
F	131	11	5	0	NA	92	50	1	4	0.13*
G										
H										

*An impact ratio of less than .80 indicates adverse impact.

in-band bonuses agency ira form

Reporting period: 7/1/02-6/30/03

EEO-4 Code	GENDER					RACE				
	#Females in Category	#Males in Category	#Females In-Band Bonuses	#Males In-Band Bonuses	Agency IRA	#Minori- ties in Category	#Cauca- sians in Category	#Minori- ties In-Band Bonuses	#Cauca- sians In-Band Bonuses	Agency IRA
A	30	52	12	12	NA	14	68	4	20	NA
B	405	264	5	5	0.50*	211	458	1	9	0.000*
C										
D										
E										
F										
G										
H										

*An impact ratio of less than .80 indicates adverse impact.

promotion agency ira form

Reporting period: 7/1/02-6/30/03

EEO-4 Code	GENDER					RACE				
	#Females in Category	#Males in Category	#Female Promo- tions	#Male Promo- tions	Agency IRA	#Minori- ties in Category	#Cauca- sians in Category	#Minority Promo- tions	#Cauca- sian Promo- tions	Agency IRA
A	30	52	1	4	.38*	14	68	2	3	NA
B	405	264	10	4	NA	211	458	4	10	NA
C										
D										
E										
F										
G										
H										

*An impact ratio of less than .80 indicates adverse impact.

employee performance rating distribution 2003



Performance Cycle 10/01/02 - 09/30/03 (Percent)					
	Total	Minority	Non-Minority	Male	Female
<i>Extraordinary Contributor</i>	25.3	17.6	29.9	25.7	25.1
<i>Contributor</i>	74.5	82.1	69.9	74.0	74.7
<i>Below Contributor</i>	0.2	0.3	0.2	0.3	0.2

standards of conduct/ agency ira form

Reporting period: 7/1/02 - 6/30/03

# Females in Agency	# Males in Agency	# Females Disciplined	# Males Disciplined	Agency IRA	# Minorities in Agency	# Caucasians in Agency	# Minorities Disciplined	# Caucasians Disciplined	Agency IRA
633	350	4	2	0.83	363	620	4	2	0.27*

*An impact ratio of less than .80 indicates adverse impact

involuntary terminations/ dismissals ira form

Reporting period: 7/1/02 - 6/30/03

# Females Disciplined	# Males Disciplined	# Females Terminated	# Males Terminated	Agency IRA	# Minorities Disciplined	# Caucasians Disciplined	# Minorities Terminated	# Caucasians Terminated	Agency IRA
4	2	1	0	0*	4	2	1	0	0*

*An impact ratio of less than .80 indicates adverse impact

standards of conduct and performance

Date	Level	Disciplinary Actions	Race	Sex
July 2002	Group I	Insubordinate/Unacceptable behavior	M	F
August 2002	Group II	Unauthorized use/misuse of computer; failure to follow supervisor's instructions	C	M
September 2002	Group II*	Customer complaints	M	F
November 2002	Group II	Inappropriate conduct, failure to follow supervisor's instructions	M	F
January 2003	Group I	Unsatisfactory performance	M	F
May 2003	Group I	Unacceptable behavior	C	M
* Dismissals, suspensions, and disciplinary demotions by race/sex.				
September 2002		Discharge	M	F



complaints and grievances

Reporting period: 7/1/02 - 6/30/03

EEO/EO complaints filed during the reporting period			
TYPE	DATE FILED	AGENCY	FINDINGS
Disability	08/02/2002	DOJ	Mediation agreement
Race	08/16/2002	VEC	No cause
Retaliation	09/09/02	DHRM	No cause
Retaliation	10/31/2002	EEOC	No cause
Sexual Harassment	12/04/2002	VEC	Cause
Race	12/16/2002	VEC	Administrative close
Race	12/30/2002	VEC	Administrative close
Disability	01/28/2003	EEOC	No determination
Race	01/31/2003	VEC	Administration close
Disability	03/14/2003	VEC	Administrative close
Race	05/09/2003	EEOC	No determination
Race	05/15/2003	EEOC	No determination
Race/Age	06/09/2003	VEC	No cause
Retaliation/Disability	06/20/2003	EEOC	No determination
Race/Gender	06/27/2003	VEC	No cause
EEO/EO complaints closed during the reporting period			
TYPE	DATE CLOSED	AGENCY	FINDINGS
Race	07/09/2002	VEC	Administrative close
Gender	08/14/2002	VEC	Administrative close
Race	08/20/2002	VEC	Conciliation agreement
Sexual Harassment/Retaliation	10/07/2002	DHRM	No cause
Race	10/11/2002	VEC	No cause
Disability	11/25/2002	DOJ	Mediation agreement
Race	01/09/2003	VEC	Administrative close
Retaliation	02/28/2003	EEOC	No cause
Race	04/01/2003	VEC	Administrative close
Race	04/01/2003	VEC	Administrative close
Disability	04/18/2003	VEC	Administrative close
Sexual Harassment	05/23/2003	VEC	Cause
There were no grievances filed alleging discrimination during the reporting period.			

technical assistance

As a recipient of federal funds under the Workforce Investment Act, the VEC is required to develop a system to periodically monitor agency compliance with nondiscrimination and equal opportunity provisions.

Each VEC field office is reviewed onsite and provided technical assistance every three calendar years by HRMS staff, under the supervision of the Human Relations Manager. In addition to ensuring compliance, the reviews are designated to communicate policy, and to identify training needs. Periodic reviews also provide an opportunity for HRMS staff to offer assistance in correcting potential violations promptly.

Offices are routinely reviewed in the following areas:

- Display of required notices
- Maintenance/knowledge of EO policy directives
- Staff and customer interviews
- Data reports
- Accessibility for individual with disabilities



glossary



Adverse Impact

A disproportionate and negative effect on groups of individuals (race, gender, age, national origin, religion, etc.) resulting from an employer's use of neutral policies and practices (e.g., an employer requires applicants to be free of facial hair: because more black men wear beards and/or moustaches than do white males, the job requirement, although racially neutral, has an adverse impact which screens out black males).

Affirmative Action

A planned proactive strategy which commits efforts to eliminate the effects of past discrimination against certain protected classes.

Availability Data

The percentage of minorities and females within a Relevant Labor Market Area (RLMA) who are either employed or unemployed and seeking employment within broad occupational categories (EEO4 categories) or specific occupations; used in comparison with employment data for utilization analyses.

DG6O

A data base on the VEC main frame that indicates utilization for agency work units. To access the data base, exit SYSM and type in "DG6O". From the Employment Analysis Main Menu, select "Individual Local Office & Central Office Work Unit Employment Analysis."

Disparate Treatment

Intentional discrimination (e.g., an employer fires a female employee for absenteeism but merely reprimands a male employee for the same offense).

EEO4 Category

An alphabetical code (A-H) assigned to job classifications by the Department of Human Resource Management (DHRM) based upon duties performed knowledge/experience requirements; found in classification specifications and the Compensation Plan, and used to group classifications for utilization analyses.

Employment Data

The percentage of minority and female employees within a specific organization; used in comparison with availability data for utilization analyses.

Equal Employment Opportunity

Equal Employment Opportunity is an employer's posture that all personnel activities will be conducted in a manner to ensure equal opportunity for all. Such activities will be based solely on individual merit and fitness of applicants and employees related to specific jobs and without regard to race, color, religion, gender, age, national origin, physical disability, political affiliation, or other non-merit factors.

Four Fifths (4/5) Rule

A standard measure of statistical balance in the effects of personnel policies and practices classes: e.g., adverse impact is indicated if the minority or female employment rate is not within approximately 4/5ths of their labor market rate.

IRA

The impact ratio analysis is a statistical method used to determine whether any minority/gender group has experienced an adverse impact in employment practices.

Mediation

A voluntary process in which Mediators assist persons in conflict to discuss their issues in an open, honest, and confidential forum; and in arriving at a mutually satisfactory agreement.



Parity

The equal representation of minorities or females in the workforce and labor market.

Parity Objective

The numerical increases needed in the employment of minorities or females in broad occupational categories or specific occupations within an organization in order to equalize their employment and labor market representation.

Relevant Labor Market Area

The geographical location from which an employer normally recruits to fill various positions within its work force(e.g., national, state, local).

Utilization Analysis

A comparison of the availability and employment data for minorities and females within EEO4 categories, or specific occupations for the purpose of determining whether the representation of minorities and females in the organization is in parity with their representation in the labor market.



appendix a

VEC Complaint Procedures for Allegations of Violations of The Nondiscrimination and Equal Opportunity Provisions of WIA

The Virginia Employment Commission (VEC) has adopted the following procedures for processing complaints that allege a violation of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA):

- Discrimination is prohibited on the basis of: race, color religion, gender, national origin, age, disability, and political affiliation or belief. Discrimination on the basis of citizenship against persons who receive VEC services is also prohibited. Moreover, persons who receive VEC services shall not be discriminated against because of their participation in any WIA-funded program or service.
- Prohibition against intimidations and retaliation: Consistent with 29 CFR 37.11, intimidation and retaliation against individuals for having filed a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing or any other activity related to administration of, exercise or authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIA is prohibited. In accordance with 29 CFR 37.11, complaints may be filed alleging intimidation and retaliation.
- Who may file: Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal employment provisions of WIA may file a written complaint by him/herself or by an authorized representative.
- Where to file: The complainant may file either locally with the Virginia Employment Commission's Human Relations Manager, or with the U.S. Department of



Labor, Civil Rights Center (CRC). Filing a complaint with the VEC does not affect a complainant's right to file a complaint with CRC if he or she is not satisfied with the resolution provided by the VEC.

The Virginia Employment Commission's Human Relations Manager is:


Alexis Thornton-Crump
Virginia Employment Commission
P.O. Box 1358, Room 101
Richmond, Virginia 23218-1358
Telephone: (804) 786-3466
TDD/VRC: 711
athornton-crump@vec.state.va.us

Complainants may file with the Civil Rights Center:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue N.W.
Room N-4123
Washington, D.C. 20210
(202)693-6500

- Time for filing: The complaint must be filed within 180 days of the alleged discrimination. If the complaint is not filed within 180 days, the Director of CRC may extend the time limits for good cause.
- Complaint Form: A complainant should complete either the VEC EEO Complaint Form (employees or applicants for employment) or the USDOL Complaint Information Form (persons receiving VEC services or participating in WIA-funded programs or services).



- 
- Right to Representation: Each complainant and respondent has the right to be represented by an attorney or other individual of his or her choice.
 - Local Level Complaint Processing: Any person who elects to file his or her complaint with the VEC should allow VEC 90 days to process the complaint.

During the 90-day period complainants may elect to participate in mediation within 15 days of filing a complaint, upon notification that the complaint has been accepted for investigation. The decision whether to use mediation or the customary investigative process rests with the complainant. If the complainant elects mediation and there is no resolution, the complaint will be referred for investigation.

If mediation is not elected, the complaint will be investigated in accordance with standard procedures as follows:

Within 15 days the Human Relations Manager will inform the complainant in writing if his or her complaint will be accepted. To be accepted a complaint must:

- be filed timely
- fall under the VEC's jurisdiction
- have apparent merit: i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.

The complainant will be advised in writing whether each issue raised in the complaint will be accepted for investigation, or rejected, and the reason for the rejections.

If a complaint contains insufficient information, the Human Relations Manager shall seek the needed information from the complainant. If the complainant is un-

available after reasonable means have been used to locate him or her, or if the information is not furnished within 15 days of the receipt of such request, the complainant's file may be closed upon notice sent to the complainant's last known address.

Where the Human Relations Manager lacks jurisdiction over a complaint, he or she shall so advise the complainant immediately in writing, indicating the reasons for the determination and the complainant's right to file with the Director of CRC within 30 days of the notice.

Where a complaint lacks apparent merit or has not been timely filed, it need not be investigated. The Human Relations Manager shall so inform the complainant and indicate the basis for non-investigation. Complainants will be advised of their right to file with the Director of CRC within 30 days of the notice.

- Discrimination Complaint Investigation Procedure: Complaints will be investigated in accordance with the procedure outlined in the State's WIA Discrimination Complaint Policy. The procedure is an attachment to the policy.
- Determinations: The Human Relations Manager shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation of the nondiscrimination and equal opportunity provisions of WIA has occurred. If an investigation results in a reasonable cause finding, the Human Relations Manager will seek concurrence from the Attorney General's Office. If the Attorney General's Office concurs, the Human Relations Manager shall issue a written determination.

The determination shall notify the complainant of the specific findings; the proposed remedial or corrective action and the time in which corrective or remedial action must be completed.



Where a no cause determination is made, the complainant shall be notified in writing. Such a determination represents the final action of the VEC.

The complainant, or the authorized representative of any complainant may contact the VEC for information regarding the complaint.

Within 90 days, the VEC shall offer a written resolution of the complaint to the complainant. The VEC shall notify the complainant of his or her right to file a complaint with the CRC, and inform the complainant that this right must be exercised within 30 days, if the VEC resolution is unsatisfactory.

If by the end of 90 days, the VEC has not completed its processing of the complaint or has failed to notify the complainant of the resolution, the complainant or his or her representative may, within 30 days following the expiration of the 90-day period, file a complaint with the Civil Rights Center.

- Corrective Action: If discrimination is found through the process of a complaint investigation, the respondent shall be requested to voluntarily comply with corrective action(s) or conciliation agreement to correct the discriminatory actions or conditions. Actions to correct discrimination deficiencies may include any of the following:

- 1) back pay, or other monetary relief (Federal funds shall not be used to provide monetary relief — also requires approval by the Attorney General's Office);
- 2) hire or reinstatement;
- 3) promotion;
- 4) benefits or other services denied; and
- 5) training to ensure equal opportunity.

- Record keeping: The VEC maintains an automated log of discrimination that includes information relevant to each complaint filed. Records pertaining to discrimination complaints, investigations or any other such actions shall be retained for a minimum of three (3) years from the date of resolution.



Information pertaining to the identity of any persons providing information related to, or assisting in, an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. In the event that it is necessary that a person's identity be disclosed, the person(s) shall be protected from retaliation.



appendix b

VEC Human Resource Management Services Personnel Practices and Procedures

Subject: VEC Mediation Program Guidelines

Reference: 29 CFR Part 37, The Administrative Dispute Resolution Act of 1996

Effective Date: July 1, 1999

Rescission: None

POLICY

It is the policy of the Virginia Employment Commission to maintain effective employee and customer relations by offering all VEC employees, applicants for employment and VEC customers an alternative means of addressing and resolving disputes, including discrimination complaints. To that end, mediation is available to VEC employees including probationary and non-classified, and applicants for employment, and any person receiving WIA services who files a discrimination complaint.

BACKGROUND

Mediation is a method of resolving conflict by allowing participants to focus on core issues of difference in a confidential environment and with the assistance of a neutral third party. Mediation has been available for State employees since 1989, through services administered by the Department of Employee Relations Counselors. In 1997 the VEC Executive Management Team approved an internal mediation program for the agency.

The Workforce Investment Act (WIA) of 1998 requires that State Employment Security Agencies (SESA's) provide alternative dispute resolution (ADR) to address allegations of discrimination, including allegations made by recipients of services. Also, in 1998, the Interstate Conference of Employment Security Agencies (now



National Association of State Workforce Agencies) adopted a resolution to support ADR.

Mediation is recognized by NASWA as the most appropriate form of ADR for addressing allegations of discrimination. Mediation is the ADR process that will be used in Virginia's WIA program. This procedure is provided to offer guidance on how the mediation process will be administered in the VEC.

DEFINITIONS

Mediation

A voluntary process in which mediators assist persons in conflict discuss the issues in an open, honest, and confidential forum, and in arriving at a mutually satisfactory agreement.

Mediator

A trained neutral person who manages the process and does not decide the issues for the persons in conflict.

Parties

Persons who are experiencing difficulties and have elected mediation in an effort to resolve the issues.

Agency Program Administrator

The VEC Human Relations Manager administers the VEC and WIA mediation program.

State Program Administrator

The Department of Employment Dispute Resolution administers the Commonwealth of Virginia's mediation program.





PROCEDURES

I. Initiation of Mediation

A. All requests for mediation will be processed through the Agency Program Administrator. Requests may be verbal or written.

B. The Agency Program Administrator will contact the parties to determine their willingness to mediate.

II. Intake/Assessment

A. The Agency Program Administrator will interview each party to the mediation and assess the appropriateness of the issues for mediation and the willingness of the parties to resolve their conflict.¹


B. The Agency Program Administrator will ensure that the parties have a basic understanding of the mediation process and understand that no party will be penalized or retaliated against for participating in, or refusing to participate, in mediation.

III. Scheduling

A. The Agency Program Administrator will coordinate the scheduling of the mediation.

B. Agency mediators will be used unless the parties request mediators from outside the agency. If outside mediators are requested, the Agency Program Administrator will either request mediators from other state agencies through the Department of Employment Dispute Resolution, or professional mediators who will provide services pro bono. The VEC Commissioner (or designee) must approve any costs incurred for the use of external mediators in advance.

¹Almost any kind of dispute can be mediated. Mediation is particularly useful in resolving ADA complaints. Mediation is not appropriate if violence is an issue, or there is a question of voluntariness.



C. The Agency Program Administrator will send written confirmation of the mediation to each party. If applicable, persons representing the parties should also be notified.

IV. How Mediations will be Conducted

A. Mediations will be held in a room that is private and in a location that will assure the mediation will not be disturbed.

B. During the mediation process, notes may be taken. However, once the mediation has been completed all notes must be turned over to the mediator for disposal.

C. Provisions will be made to ensure facilities utilized are accessible. Reasonable accommodations will be made for person(s) with disabilities.

V. Completed Mediations

A. When resolution is reached, the mediator will record the parties' written agreement. The agreement will be signed by the parties, and copies will be given to them.

B. The Agency Program Administrator will review the agreement, if one is reached, to ensure that it does not contain any provision that is contrary to law or policy.

VI. Confidentiality

A. All mediation sessions are strictly confidential and will be closed to any individual other than the parties and if applicable, their representatives, except by consent of both parties and the mediator.

B. The only written document that may leave the room is the agreement reached by the parties. No notes may leave the room; no form of audio or video recording is permitted.

C. Communication and information disclosed during the mediation is privileged and confidential and shall not be disclosed to any third party, except for the purpose of implementation or enforcement, or by written agreement of both parties.

D. The Agency Program Administrator is responsible for maintaining the mediation files and is the only person who can grant access to the documents.

VII. Impact of Mediation on the Grievance Procedure (**Eligible Employees Only**)

A. If a grievance has been initiated at the time of the request for mediation, and the parties agree to mediate, the grievance will be suspended pending the conclusion of the mediation.

B. If a grievance has not been initiated at the time of the request for mediation, the agency will grant an extension to the 30 calendar day grievance initiation period at the request of the employee.

C. As a result of mediation, the parties may agree that a written grievance will not be initiated or that the grievance in progress will be concluded.

D. If the parties do not reach an agreement, the employee may initiate a grievance within the 30 calendar day extension period, or continue a grievance from the



step at which it was suspended.

VIII. Impact of Mediation on the Discrimination Complaint Procedure

A. Complainants will be offered the opportunity to participate in mediation within 15 days of filing a complaint, upon notification that the complaint has been accepted for investigation. The choice whether to use mediation or the investigative process rests with the complainant.

B. The mediation should be held in sufficient time to reach resolution or closure within 90 days of filing of the initial complaint.

C. The mediation process will be concluded when one of the following occurs: the complainant withdraws the complaint in writing, a settlement agreement is signed by the parties, or the parties are unable to resolve the dispute.

D. If a resolution is not achieved, complaints will be investigated by the appropriate WIA EO officer (or designee) in accordance with the Discrimination Complaint Investigation Procedure, which is an attachment to the WIA Discrimination Complaint Policy.

E. All agreements to resolve a discrimination complaint will include a no admission of discrimination clause, and a statement that the complaining party agrees to withdraw the complaint.

F. The Agency Program Administrator will follow up on any settlement agreement to ensure that actions are completed in a timely manner and that ongoing requirements of the agreement are monitored.

IX. Breach of the Agreement



A. If either party alleges that the agreement has been violated, the Agency Program Administrator will review the agreement with each party and attempt to resolve the issues which may have contributed to the violation.

B. If the Agency Program Administrator is unsuccessful in resolving the issues, the parties may return to mediation to resolve the issues, void the agreement, amend the agreement, or enter into a new agreement.

C. If management alleges that an employee has breached the agreement, and the agreement is voided, management may take action retroactively to address the issue that led to mediation.

D. If an agreement is voided because of a breach of an item that was accepted by an employee as resolution of a grievance, the employee may reinstate the grievance within 5 work days, at the step where it was concluded.

E. Within 30 calendar days after an agreement has been voided, an employee has the right to initiate a grievance on the issue that led to the request for mediation.

F. For any agreement reached to resolve a discrimination complaint, the Director of CRC must evaluate the circumstances to determine whether the agreement has been breached. If the agreement has been breached, the complainant may file a complaint with the Director of CRC, based on the original allegations and the Director of CRC will waive the time deadline for filing.



X. Responsibilities

A. Agency Program Administrator

1. Promote mediation to all staff and customers.
2. Establish written program guidelines.
3. Maintain a roster of mediators and data on mediation activities.
4. Monitor agency settlement agreements for compliance.
5. Coordinate and schedule mediations.
6. Provide training programs for mediators.

B. Agency Management

1. Promote mediation as an alternative for resolving disputes.
2. Grant approval for employees to be trained as mediators.
3. Allow employee participation in mediation without loss of leave/pay.

C. Agency Head

1. Designate individuals with authority to bind the agency in agreements reached to resolve discrimination complaints.
2. Support written agreements that bind the agency.
3. Determine appropriate sanction(s) if a written agreement to resolve a discrimination complaint is breached.

AGENCY RIGHT

The Virginia Employment Commission reserves the right to revise or eliminate this policy.

